

**PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

Name Atterbury Danny F.  
 (Last) (First) (Initial)

Prisoner Number NA 202460-2 NAPA STATE HOSPITAL

Institutional Address 2100 Napa Vallejo Hwy., Napa, CA 94558

**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA**

Danny F. Atterbury,  
 (Enter the full name of plaintiff in this action.)

vs.

ED Foulk, Executive Director, Napa State (mental  
Hospital.

(Enter the full name of respondent(s) or jailor in this action)

Case No. \_\_\_\_\_  
 (To be provided by the clerk of court)

**PETITION FOR A WRIT  
 OF HABEAS CORPUS**

Read Comments Carefully Before Filling In

When and Where to File

You should file in the Northern District if you were convicted and sentenced in one of these counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in this district if you are challenging the manner in which your sentence is being executed, such as loss of good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

If you are challenging your conviction or sentence and you were not convicted and sentenced in one of the above-named fifteen counties, your petition will likely be transferred to the United States District Court for the district in which the state court that convicted and sentenced you is located. If you are challenging the execution of your sentence and you are not in prison in one of these counties, your petition will likely be transferred to the district court for the district that includes the institution where you are confined. Habeas L.R. 2254-3(b).

PET. FOR WRIT OF HAB. CORPUS

- 1 -

**FILED**

08-11-08 PM 12:34  
 RICHARD W. WIEKING  
 U.S. DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

(PR)  
**MHP**

**CV 08 3645**

*De*

Who to Name as Respondent

You must name the person in whose actual custody you are. This usually means the Warden or jailor. Do not name the State of California, a city, a county or the superior court of the county in which you are imprisoned or by whom you were convicted and sentenced. These are not proper respondents.

If you are not presently in custody pursuant to the state judgment against which you seek relief but may be subject to such custody in the future (e.g., detainees), you must name the person in whose custody you are now and the Attorney General of the state in which the judgment you seek to attack was entered.

A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

## 1. What sentence are you challenging in this petition?

- (a) Name and location of court that imposed sentence (for example; Alameda County Superior Court, Oakland):

ElDorado County Superior Court Placerville, California

Court

Location

- (b) Case number, if known 53460

- (c) Date and terms of sentence Sentenced on September 20, 1989, 15 yrs, 4 mo.

- (d) Are you now in custody serving this term? (Custody means being in jail, on parole or probation, etc.) Yes x No

Where? Napa, California

Name of Institution: Napa State Hospital

Address: 2100 Napa Vallejo Hwy., Napa, California 94558

2. For what crime were you given this sentence? (If your petition challenges a sentence for more than one crime, list each crime separately using Penal Code numbers if known. If you are challenging more than one sentence, you should file a different petition for each sentence.)

Two counts Cal. Penal Code, § 664/187, but both injured parties only received minor injuries  
and were treated and released; but this petition concerns conditions of confinement. (See  
Griggs v. Superior Court (1976) 16 Cal.3d 341.)

3. Did you have any of the following?

Arraignment: Yes x No       

Preliminary Hearing: Yes x No       

Motion to Suppress: Yes        No x

4. How did you plead?

Guilty        Not Guilty        Nolo Contendere       

Any other plea (specify) Not guilty by reason of insanity.

5. If you went to trial, what kind of trial did you have?

Jury        Judge alone        Judge alone on a transcript x

6. Did you testify at your trial? Yes        No x

7. Did you have an attorney at the following proceedings:

(a) Arraignment Yes x No       

(b) Preliminary hearing Yes x No       

(c) Time of plea Yes x No       

(d) Trial Yes        No x

(e) Sentencing Yes x No       

(f) Appeal Yes x No       

(g) Other post-conviction proceeding Yes        No x

8. Did you appeal your conviction? Yes x No       

(a) If you did, to what court(s) did you appeal?

Court of Appeal Yes x No       

Year: 1989 Result: Counsel abandoned appeal

Supreme Court of California Yes        No x

Year:        Result:       

Any other court Yes        No x

Year:        Result:       

(b) If you appealed, were the grounds the same as those that you are raising in this

petition? Yes \_\_\_\_\_ No x

(c) Was there an opinion? Yes \_\_\_\_\_ No x

(d) Did you seek permission to file a late appeal under Rule 31(a)?  
Yes \_\_\_\_\_ No x

If you did, give the name of the court and the result:

This is a conditions of confinement petition. (

9. Other than appeals, have you previously filed any petitions, applications or motions with respect to this conviction in any court, state or federal? Yes x No \_\_\_\_\_

[Note: If you previously filed a petition for a writ of habeas corpus in federal court that challenged the same conviction you are challenging now and if that petition was denied or dismissed with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit for an order authorizing the district court to consider this petition. You may not file a second or subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28 U.S.C. §§ 2244(b).]

(a) If you sought relief in any proceeding other than an appeal, answer the following questions for each proceeding. Attach extra paper if you need more space.

I. Name of Court: First District California Court of Appeal.

Type of Proceeding: Habeas corpus petition.

Grounds raised (Be brief but specific):

a. Medical and psychological abuse.

b. Denial of proper and meaningful medical care.

c. Cruel and unusual punishment, denial of due process and equal protection.

d. Denied meaningful access to the courts.

Result: Denied. Date of Result: 6/11/08

II. Name of Court: California Supreme Court.

Type of Proceeding: Habeas corpus petition.

Grounds raised (Be brief but specific): Same grounds as in Court of Appeals.

1 a. Same grounds raised as in First District Court of Appeals, as---

2 b. listed above in § (a)(I).

3 c. \_\_\_\_\_

4 d. \_\_\_\_\_

5 Result: Deneid Date of Result: 7/23/08

6 III. Name of Court: The California Supreme Court was the final State Court.

7 Type of Proceeding: Habeas petition

8 Grounds raised (Be brief but specific):

9 a. Same grounds raised as in First District Court of Appeals, as---

10 b. listed above in § (a)(I).

11 c. \_\_\_\_\_

12 d. \_\_\_\_\_

13 Result: \_\_\_\_\_ Date of Result: \_\_\_\_\_

14 IV. Name of Court: The California Supreme Court was the final State Court.

15 Type of Proceeding: Habeas petition

16 Grounds raised (Be brief but specific):

17 a. Same grounds raised as in First District Court of Appeals, as---

18 b. listed above in § (a)(I).

19 c. \_\_\_\_\_

20 d. \_\_\_\_\_

21 Result: \_\_\_\_\_ Date of Result: \_\_\_\_\_

22 (b) Is any petition, appeal or other post-conviction proceeding now pending in any court?

23 Yes \_\_\_\_\_ No x

24 Name and location of court: No proceedings anywhere concerning the issues here.

25 B. GROUNDS FOR RELIEF

26 State briefly every reason that you believe you are being confined unlawfully. Give facts to  
27 support each claim. For example, what legal right or privilege were you denied? What happened?  
28 Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you



1 need more space. Answer the same questions for each claim.

2 [Note: You must present ALL your claims in your first federal habeas petition. Subsequent  
3 petitions may be dismissed without review on the merits. 28 U.S.C. §§ 2244(b); McCleskey v. Zant,  
4 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).]

5 Claim One: Habeas corpus petition alleging unconstitutional conditions of confinement  
6 first filed in the state courts pursuant to Griggs v. Superior Court (1976) 16 Cal.3d 341.

7 Supporting Facts: Subjected to cruel and unusual punishment and denial of due process and  
8 equal protection of laws, in retaliation because I exercised right to complain and this violates  
9 the US and California Constitutions. (See attached sheet.)

10 Claim Two: Denied meaningful access to the courts.

11  
12 Supporting Facts: (Not enough room--please see attached sheet.)

13  
14  
15  
16 Claim Three: (Not enough room--please see attached sheet.)

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18 Supporting Facts: (Not enough room--please see attached sheet.)

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21  
22 If any of these grounds was not previously presented to any other court, state briefly which  
23 grounds were not presented and why:

24  
25 All grounds were previously presented to the state courts. (Please see attached sheet)



1 List, by name and citation only, any cases that you think are close factually to yours so that they  
2 are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning  
3 of these cases:

4 Ex parte Hull (1941) 312 U.S. 546, 549; Estelle v. Gamble, citing Gregg v. Georgia, 428 U.S. 153,  
5 182-83 (1976); Farmer v. Brennan, 511 U.S. 825, 837 (1994); to name a few relevant cases.

6 \_\_\_\_\_  
7 Do you have an attorney for this petition? Yes \_\_\_\_\_ No x

8 If you do, give the name and address of your attorney:  
9 \_\_\_\_\_

10 WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in  
11 this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

12 \_\_\_\_\_  
13 Executed on July 28, 2008

14 Date

15 \_\_\_\_\_  
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26 \_\_\_\_\_  
27 \_\_\_\_\_  
28 \_\_\_\_\_  
Signature of Petitioner

(Rev. 6/02)

Danny Atterbury  
2100 Napa Vallejo Hwy.  
Napa, CA 94558

United States District Court  
Northern District of California  
450 Golden Gate Ave.  
San Francisco, California, 94102

**Introduction to Petition for Habeas Corpus Writ  
Title 28 U.S.C. § 2254**

Before I begin I would like to request this habeas petition is assigned to a Magistrate Judge because I read the booklet titled "Consenting to a Magistrate Judge's Jurisdiction in the Northern District of California," and the "Message from the Chief Judge of the U.S. District Court, the Honorable Vaughn R. Walker, indicates it would be better in my particular case and the process faster for this habeas petition to be assigned to a Magistrate Judge.

I have requested freedom of speech, due process, and the equal protection of the laws at Napa State "Hospital" (NSH) for many years, and I have requested proper and meaningful medical treatment for a very painful and disabling spinal injury for eight years thus far, and I need medical care now. I understand that a Magistrate Judge is assigned a civil caseload approximately 30% that of a District Judge's caseload, in recognition of a Magistrate Judge's other duties, and this means the process will be completed sooner with a Magistrate Judge presiding over the case.

This habeas petition involves my unsuccessful quest of many years to obtain due process and the equal protection of the laws at NSH and from the Napa County Superior Court system that appears to be afflicted with the stigma of mental illness and fact-finder deference to psychiatric testimony, as perceptively explained by the California Supreme Court in *Conservatorship of Roulet* (1979) 23 Cal.3d 219, 229-230, 235.)

CCHR<sup>1</sup> Investigator, Mr. William Sargent, other patients, and I have filed numerous complaints about this abuse over several years with the NSH Patients' Rights Advocate and several outside agencies but relief was denied, and NSH is treated like it is above the law. The Napa Superior Court never does anything about this except summarily deny petitions for relief, and the NSH abuse has probably been going on for

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<sup>1</sup> Note: CCHR was established in 1969 by the Church of Scientology to investigate and expose psychiatric violations of human rights, and to clean up the field of mental healing. Today, it is estimated that CCHR has more than 250 chapters in over 31 countries. Its board of advisors, called Commissioners, includes doctors, lawyers, educators, artists, business professionals, and civil and human rights representatives. CCHR has inspired and caused many hundreds of reforms by testifying before legislative hearings and conducting public hearings into psychiatric abuse, as well as working with media, law enforcement, and public officials the world over. (CCHR: [www.cchr.org](http://www.cchr.org) • [www.psychdrugsdangers.com](http://www.psychdrugsdangers.com) • e-mail: [humanrights@cchr.org](mailto:humanrights@cchr.org) • [www.psychcrime.org](http://www.psychcrime.org) • <http://www.dodig.osd.mil/INV/DCIS>) (CCHR: Tele: (323) 467-4242 • (800) 869-2247 • (800) 942-2247 • see also Bill Sargent, Shasta County at (530) 472-3299 • e-mail-cchr@jett.net • e-mail-sarge@jett.net)



the over 100 years of NSH's existence judging by the Napa Superior Court's failure to intervene.

I filed a habeas corpus petition in the First District California Court of Appeal (#A121447) alleging it is useless to petition the Napa County Superior Court about the cruelty, abuse, and fraud at Napa State Hospital (NSH) because the Napa Superior Court ignores the abuse and routinely dismisses all pro per petitions for relief, shows deference to NSH excuses, and accepts contrived evidence as true and correct without question. A Napa Court Clerk once told me the Napa Judge telephones the NSH Medical Director per judicial policy to "weed out" frivolous complaints and the judge automatically dismissed my habeas corpus petition on the director's report. The First District Appeals Court ordered the Napa Court records but did not follow through and the California Supreme Court is the proper Court of next resort.

I do not have proof of the "weeding out" policy and procedure; but the Citizens Commission on Human Rights (CCHR) did an investigation when the NSH Police subjected patients Bartolo Mullen and Lance Kerins to an illegal search and seizure on July 9, 2007, and issued Mullen and Kerins identical generic ex post facto search warrants on July 18, 2007, purportedly issued and signed by Napa Superior Court Magistrate Judge Rodney G. Stone. CCHR Attorney Kendrick Moxon questioned this, and the Napa Court Clerk told Investigator Mr. William Sargent the warrant was not recorded and there is no supporting affidavit. The warrant appears to be either a generic warrant pre-signed by Magistrate Stone, or a forgery by NSH Police Officer Jesus Gallegos. Either way, this is all unlawful and it can be proved Officer Gallegos committed perjury and lied about the reason for the retaliatory search on the warrant, lied about the evidence, and the Napa Superior Court would not respond to inquiries about this and either ignored or summarily dismissed all attempts made to rectify the matter. (See enclosed copy of search warrant and affidavits.)

Some NSH employees subject me to cruel and unusual punishment and denial of due process and the equal protection of the laws, in vindictive retaliation because I exercise my First Amendment Rights under the US and California Constitutions, to petition the courts and complain about the fraud and abuse. I am 60 years old and some of my custodians prevented me from eating any state food from April of 2007 to April 2008, and I survived on cereal and other foods my friends bought me at the institution's canteen when I went outside for exercise and to the library. I am unable to eat in the dining room because the pain caused by standing in line in one place carrying a tray for very long hurts me too much, and sitting in the straight-backed chairs for very long exacerbates my pain and disability. Furthermore, I am supposed to be on a vegetarian diet and the aroma [odor] in the dining room of pork and other meat products nauseates me and this in combination with the profanity and body odor of the low-functioning violent patients housed on the on restrictive deprivation and punishment the Ward T-7 makes it impossible for me to eat in the dining room. Certain of my custodians decided that I look fine and I must be malingering and I should not eat unless I sit and eat in the dining room and refused to bring me food back from the dining room from April 2007 until April 2008 when I had a room change and my new roommate made many accusations of

cruelty and incompetence against the custodians depriving me of food and demanded that the custodians feed me.

Some patients complained about some staff refusing to give me food, and the staff told them they were going to give me something to eat. However, staff either did not bring me anything to eat and said they forgot, or else staff brought me something not kosher and inedible. Obviously, there are some people working at NSH who try to help the patients as much as they can, considering the US Justice Department found NSH failed to provide adequate medical care, adequate nursing care, adequate nutritional services, and systematic violations that puts its patients' lives in danger during two separate CRIPA Investigations spanning the last two decades. (See [www.usdoj.gov](http://www.usdoj.gov).)

However, many of the violations clandestinely continue due to the "conflict of interest" court monitor not doing his job and apparently furthering the state's interests instead. The Honorable George Schavelli, United States District Court Judge, Central District of California, appointed the court monitor (Mohamed El-Sabaawi, M.D.) and the Judge apparently did not realize the monitor has a conflict of interest between doing what is right for the patients and the NSH hand that feeds him. This conflict of interest apparently was not brought to light until Los Angeles Times newspaper reporter Lee Romney published a series of successive articles in the Times beginning on May 2, 2006. The articles explained that NSH had been retaining consultant Nirhbay Singh from the Human Potential Consulting Group in Alexandria Virginia for 1.1 million dollars per year for several years before Judge Schavelli appointed Nirhbay Singh's colleague Mohamed El-Sabaawi, from the same Human Potential Consulting Group in Alexandria Virginia to implement and monitor the consent judgment in CV 06-2667 GPS.

There are some very overbearing, cruel, and sick people currently working behind the closed and locked doors of NSH, and the May 1997 report of the investigation Protection & Advocacy (PAI), Inc., conducted at NSH confirms that things have not changed much in this regard at NSH in the decade following the May 1997 PAI report.

In fact, the same "code of silence" or the failure to speak out when wrongdoing is committed by co-workers found in 1997 is still alive and well at NSH in 2008, and this is only one of many institutional barriers that prevent staff from reporting the abuse of residents at facilities such as NSH. The report notes "studies indicate that institutional barriers make it unrealistic to rely primarily on direct care staff to break the code of silence and report abuse by fellow employees" and "despite official expectations and no matter how conscientious the direct-care staff, it is unrealistic to expect that staff abuse can be adequately monitored and disciplined by relying on fellow workers as the primary reporters. Aside from strong personal considerations, including loss of effective working relationships and documented threats of retaliation, there are institutional barriers to this sort of freelance monitoring." (See *Staff Report on the Institutionalized Mentally Disabled: Joint Hearings Before the Subcommittee on the Handicapped of the Committee on Labor and Human Resources and the Subcommittee on Labor, Health and Human Services, Education, and Related Agencies of the Committee; Napa State Hospital's Failure to Protect Residents from Abusive & Related Potential Criminal Acts by Staff -*



Protection & Advocacy, Inc. (PAI) Appropriations, United States Senate (April 1-3, 1985); <http://www.pai-ca.org/pubs/701101.htm>.)

It took me from 2001, when I fell and re-injured an old .38 caliber gunshot wound to my spine, to July 2, 2008, to obtain an MRI to determine the extent of the spinal injury, which is about eight years. The first page of the results reads in pertinent part “[t]here is a central compression fracture of the L3 vertebral body with approximately 30-40% loss in height. The fracture is remote in age based on the “rr arrow” [sic] signal intensities.” (Emphasis mine.) The conclusion to the results on page 2 states the MRI revealed (1) “multi-level degenerative disc disease with lateral disc protrusions at L3-4 and L4-5 resulting in neural foraminal stenosis,” and (2) “chronic (remote) L3 vertebral body compression fracture.”

The First District Court of Appeal issued an order on May 13, 2008, and ordered the Napa Court to produce copies of some of the petitions I filed about the abuse at NSH but the First District Court of Appeal denied the petition without comment on June 11, 2008. (See enclosed copies of May 13, 2008, and June 11, 2008, orders issued by the First District Court of Appeal.)

I mailed a habeas corpus petition to the California Supreme Court and I alleged the same issues I had previously alleged to the First District Court of Appeal and the California Supreme Court filed the petition on June 18, 2008, and numbered the petition S164449. The California Supreme Court subsequently denied habeas corpus petition S164449, at an En Banc proceeding on July 23, 2008. (See enclosed California Supreme Court denial order stamped “GEORGE, Chief Justice.”)

In support of the decision to deny my habeas corpus petition, the California Supreme Court cited *In re Dexter* (1979) 25 Cal.3d 921 (The requirement that a litigant will not be afforded judicial relief unless he has exhausted available administrative remedies applies to grievances lodged by prisoners); and *In re Lessard* (1965) 62 Cal.2d 497, 503] (state procedural requirements governing assertion and pursuance of direct and collateral constitutional challenges to criminal prosecutions must be respected and Petitioner’s counsel did not object to the introduction of evidence which allegedly had been illegally obtained, but he stated that he did not object to it and, additionally, did not present the issue on appeal.)

I started trying to exhaust the NSH administrative grievance procedure shortly after July 9, 2007, and I still have not been able to completely exhaust the grievance procedure at NSH due to state hospital personnel procrastination, and there is not even a time limit listed for the Department of Mental Health to complete their part of the grievance procedure.

With all due respect, I think the *In re Lessard* (1965) 62 Cal.2d 497, 503, case the California Supreme Court cited to support denying my habeas petition is inapposite, and perhaps I confused my argument and the California Supreme Court assumed I was arguing a different point when it cited *In re Lessard*. Considering all the facts here, it is

unfair to require me to spend any more time “slow dancing” with the state officials and the advocates, and I do not know how months and months of frustrations and pain and discomfort can be repaired.

### **The Grievance Procedure Is Inadequate**

#### **a. Time Limits**

The NSH Grievance Procedure is too time consuming and although I began attempting to exhaust the grievance procedure in early July 2007, I still have not been able to do so attributable to procrastination on the part of the parties involved (i.e., Mr. Foulk and Protection & Advocacy, Inc. Patients’ Rights Advocates). In fact, I still have not received an answer to my appeal about this matter from the Office of Patients’ Rights in Sacramento, a subsidiary of Protection & Advocacy, Inc.), and the Third Level of Appeal to the California Department of Mental Health does not even list a time limit.

#### **b. An Effective Remedy Is lacking**

I have previously filed and appealed denied grievances and although the Office of Patients’ Rights, subsidiary of Protection & Advocacy, Inc., found that NSH violated my constitutional or Patients’ Rights nothing was done to rectify or redress the violations, and it appears I have rights without remedies. Moreover, there is no administrative grievance procedure or remedy to complain about the Napa County Superior Court failing to take action on valid claims or to complain about or correct the Napa County Superior Court’s deference to psychiatric testimony or bias.

The doctrine of exhaustion of administrative remedies has not hardened into inflexible dogma. (*Hollon v. Pierce*, 257 Cal.App.2d 468, 476.) It contains its own exceptions, as when the subject matter of the controversy lies outside the administrative agency’s jurisdiction (*County of L.A. v. Dept. of Social Welfare*, 41 Cal.2d 455, 457), when pursuit of an administrative remedy would result in irreparable harm (*Greenblatt v. Munro*, 161 Cal.App.2d 596, 605-607; see *Abelleira v. District Court of Appeal*, 17 Cal.2d 280, 296-297), when the administrative agency cannot grant an adequate remedy (*Endler v. Schutzbank*, 68 Cal.2d 162, 168; *Eye Dog Foundation v. State Board of Guide Dogs for the Blind*, 67 Cal.2d 536, 543-544), and when the aggrieved party can positively state what the administrative agency’s decision in his particular case would be. (See *Gantner & Mattern Co. v. California E. Com.*, 17 Cal.2d 314, 318; *Ogo Associates v. City of Torrance* (1974) 37 Cal.App.3d 830, 834; *In re Thompson* (1985) 172 Cal.App.3d 256, 262-263; *In re Fain* (1976) 65 Cal.App.3d 376, 395; *In re Dexter* (1979) 25 Cal.3d 921, 925; see also *Exhaustion of Administrative Remedies in California*, 56 Cal.L.Rev. 1061, 1068-1081.)

As I stated above, I started trying to exhaust the NSH administrative grievance procedure shortly after July 9, 2007, and I still have not been able to exhaust the NSH grievance procedure at NSH due to procrastination and there is not even a time limit listed for the Department of Mental Health to process their part of the grievance procedure. However, unlike the grievance procedure the state Department of Corrections

has, the NSH procedure does not inform the mental patient in writing of the reasons for exceptional delays preventing closure within the specified time limits and the NSH procedure does not give the mental patient an estimated completion date. (See *Bailey v. Loggins* (1982) 32 Cal.3d 907, 932, citing *In re Muszalski* (1975) 52 Cal.App.3d 500, 506-507 [125 Cal.Rptr. 286].)

It is very difficult and painful for me to do anything due to my spinal injury and there must eventually come and end to trying to exhaust an administrative remedy when state officials procrastinate and months and years pass by while waiting for responses to proceed further with the complaint. I have many witnesses that can verify that the advocates stopped responding to complaints altogether and this is an unconstitutional "catch 22" or dilemma. Furthermore, "the exhaustion requirement does not apply where an effective remedy is lacking. For example, in *Rosenfield v. Malcolm* (1967) 65 Cal.2d 559 [55 Cal.Rptr. 505, 421 P.2d 697], the court held that where no specific remedy is provided, the mere existence of a general supervisory power in some official body is not a remedy to be exhausted," and "another exception to the exhaustion rule would be where some irreparable damage would occur from the denial of immediate judicial relief." (See *In re Thompson* (1975) 52 Cal.App.3d 780, 783, citing *Greenblatt v. Munro* (1958) 161 Cal.App.2d 596 [326 P.2d 929].)

The issues in this habeas corpus petition are of issues of broad public interest and likely to recur and a lot of other patients are currently being medically neglected and abused, although the taxpayers had to "dish-out" \$180,264.00, cost of care per individual at NSH in 2007 alone and the cost increases every year. (See enclosed chart revealing cost of care at NSH.) The issues presented in this petition personify cases where persons at low levels of society are perpetually deprived of constitutional rights and should not be left utterly remediless and defenseless against repetitions of unconstitutional conduct. (*Sibron v. New York* (1968) 392 U.S. 40, 52-53; see also *In re John Ballay* (1973) 482 F.2d 648, 651, citing *Sibron v. New York*, 392 U.S. 40, 57) ("There is yet another independent reason why the present appeal is not moot - the collateral consequences of being adjudged mentally ill remain to plague appellant. We recently had occasion to consider whether the standard applied in criminal cases, that a case is moot only if it is shown that there is no possibility that any collateral legal consequence will be imposed on the basis of the challenged conviction.")

### **Request for Relief**

Therefore, I respectfully request this Court to forthwith grant habeas corpus writ and any and all other appropriate relief.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, memory, and belief.

Respectfully submitted,

Dated: 7/28/08

Danny Atterbury





Enclosures: (1) Attached sheet; (2) Copy of First District Court of Appeal May 13, 2008 Order; (3) Copy of June 11, 2008 Order; (4) Copy of Search Warrant; (5) Affidavit by Lance Kerins; (6) Affidavit by Clifford Powers; (7) Affidavit by Jess Massey; (8) Chart showing NSH Cost of Care for each individual per year.

Some relevant cases: Ex parte Hull (1941) 312 U.S. 546, 549 [61 S.Ct. 640; 85 L.Ed. 1034]; Lewis v. Casey, 518 U.S. 343, 357, 116 S.Ct. 2174, 135 L.Ed.2d 606 (1996) (court access) People v. Machupa (1994) 7 Cal.4th 614, 615; People v. Aston (1985) 39 Cal.3d 481, 703 P.2d 111; 216 Cal. Rptr. 771; People v Murgia (1974, 4th Dist) 43 Cal App 3d 85, 117 Cal Rptr 564.) (Illegal warrants)

S164449

**IN THE SUPREME COURT OF CALIFORNIA**

**En Banc**

---

In re DANNY ATTERBURY on Habeas Corpus

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The petition for writ of habeas corpus is denied. (See *In re Dexter* (1979) 25 Cal.3d 921; *In re Lessard* (1965) 62 Cal.2d 497, 503.)

**SUPREME COURT  
FILED**

JUL 23 2008

Frederick K. Ohlrich Clerk

---

Deputy

**GEORGE**

---

Chief Justice

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

COPY

FILED

COURT OF APPEAL, FIRST APPELLATE DISTRICT

MAY 13 2008

DIANA HERBERT, CLERK

DEPUTY CLERK

In re DANNY ATTERBURY on  
Habeas Corpus.

A121447  
(El Dorado County Superior  
Court Case No. 53460 and  
Napa County Superior Court  
Case No. HC1423)

BY THE COURT:

Pursuant to rule 8.380(b) of the California Rules of Court, and good cause appearing therefore, it is ordered that the Clerk of Napa County transmit to this court the original superior court file in *In re Danny Atterbury on Habeas Corpus*, case number HC1373, HC1393, HC1399, HC1797, and HC1423.

It is further ordered that the Clerk of this Court return said file to the County Clerk after it has served its purpose.

MAY 13 2008

Dated: \_\_\_\_\_

**STEIN, J.**

Acting P.J.

COURT OF APPEAL, FIRST APPELLATE DISTRICT  
350 MCALLISTER STREET  
SAN FRANCISCO, CA 94102  
DIVISION 1

JUN 11 2008

RECEIVED

DEPT. CLERK

In re DANNY ATTERBURY on Habeas Corpus.

A121447

El Dorado County No. 53460. HC1423

BY THE COURT:

The petition for writ of habeas corpus is denied.

The justices participating in this matter were:

Acting Presiding Justice Stein, Justice Swager and Justice Margulies

Date:

JUN 11 2008

**STEIN, J.**

Acting P.J.

STATE of CALIFORNIA, COUNTY of NAPA,

# SEARCH WARRANT AND AFFIDAVIT (AFFIDAVIT)

Investigator Jesus Gallegos #662 declares under penalty of perjury that the facts expressed by him/her in the attached and incorporated **Statement of Probable Cause** are true and that based thereon he/she has probable cause to believe and does believe that the articles, property, and persons described below are lawfully seizable pursuant to Penal Code Section 1524, as indicated below, and are now located at the locations set forth below. Wherefore, Affiant requests that this Search Warrant be issued.

  
(Signature of Affiant)

NIGHT SEARCH REQUESTED: YES ☐ NO ☒

## (SEARCH WARRANT)

THE PEOPLE OF THE STATE OF CALIFORNIA TO ANY SHERIFF, POLICEMAN OR PEACE OFFICER IN THE COUNTY OF NAPA: proof by affidavit, under penalty of perjury, having been made before me by **Police Officer / Investigator Jesus Gallegos #662** that there is probable cause to believe that the property or person described herein may be found at the location(s) set forth herein and that it is lawfully seizable pursuant to Penal Code Section 1524 as indicated below by "x"(s) in that it:

- ☐ was stolen or embezzled.
- ☐ was used as the means of committing a felony.
- ☒ is possessed by a person with the intent to use it as means of committing a public offense or is possessed by another to whom he or she may have delivered it for the purpose of concealing it or preventing its discovery.
- ☒ tends to show that a felony has been committed or that a particular person has committed a felony.
- ☐ tends to show that sexual exploitation of a child, in violation of Penal Code Section 311.3, or possession of matter depicting sexual conduct of a person under the age of 18 years, in violation of Section 311.11, has occurred or is occurring.
- ☐ there is a warrant to arrest the person.

You are Therefore **COMMANDED** to **SEARCH**: (premises, vehicles, persons)

The Napa State Hospital Police Department, Property Detail located at 2100 Napa-Vallejo Hwy., Napa, California, 94558, in the County of Napa. Property seized on July 9<sup>th</sup>, 2007 at 2100 Napa-Vallejo Hwy. Unit T-13, Napa, California. The computer equipment and counterfeit evidence was booked at the Napa State Hospital Police Department as evidence using Property Control Number #07-07-0500. The evidence was seized during a routine shakedown of Napa State Hospital Unit T-13.

For the **FOLLOWING PROPERTY** or **PERSON(s)**:

Examination and search of computers and computer system components such as; CPU central processing units, internal and peripheral storage devices such as internal or external hard drives, removable storage devices and disks/hard drives, floppy disk drives and diskettes, CD-R, CD-RW, DVD drives and disks, tape drives and tapes, optical storage devices or other memory storage devices, integral RAM or ROM devices; peripheral input/output devices such as keyboards, touch pads, printers, scanners, plotters, cameras, video display monitors, modems, external data storage devices, optical readers and related communication devices such as acoustic or electrical modems, or other controlling devices such as diskettes, CD-R, CD-RW, DVD disks, power back-up devices, connecting switches, interface devices, software to run programs, connecting cables, switches, power sources, and plugs.

Examination and search of all of the above components is for files, data, images, software, operating systems, deleted files, system configurations, drive and disk configurations, date and time, unallocated and slack space, for evidence.



It is your Affiant's experience that computer system forensic examinations and searches cannot be completed within the ten days in which the Search Warrant must be served and the Return to Search Warrant filed with the Search Warrant. It is requested that the 10-day requirement be waived to provide your Affiant ample time to have it processed and comply with the Search Warrant in a timely manner. The Return to Search Warrant and Search Warrant will be filed promptly upon completion of the computer system forensic examination and search.

**AND TO SEIZE IT / THEM IF FOUND** and bring it / them forthwith before me, or this court, at the courthouse of this court. This **Search Warrant** and **Affidavit** and attached and incorporated **Statement of Probable Cause** were sworn to as true under penalty of perjury and subscribed before me on this 18 day of July, 2007, at 4:35 ~~AM~~ / P.M. Wherefore, I find probable cause for the issuance of this Search Warrant and do issue it.

  
\_\_\_\_\_  
(Signature of Magistrate)

KNOCK - NOTICE EXCUSED: YES ☐ NO ☒  
NIGHT SEARCH APPROVED: YES ☐ NO ☒

Judge of the Superior Court of California, County of Napa

Rodney G. Stone  
\_\_\_\_\_  
(Magistrate's Printed Name)

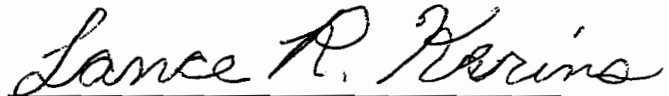
AFFIDAVIT

I, Lance Kerins, was given a copy of a warrant to search my computer by Napa State Hospital Police Department, Investigator Jesus Gallegos #662. This warrant, upon comparison with the warrant that Bartolo was served by this same Investigator, is exactly the same warrant. All information on the warrant I was served is the same as the warrant Bartolo Mullen was also served. There is no difference whatsoever at all. My computer is a Gateway M320X. My computer is a different brand and model than Bartolo Mullen computer. neither my name or Bartolo Mullen name is on these search warrants.

I DECLARE UNDER PENALTY OF PERJURY THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

Date: August 3, 2007.

Lance Kerins

A handwritten signature in cursive script that reads "Lance R. Kerins". The signature is written in dark ink and is positioned above a horizontal line.

SIGNATURE

AFFIDAVIT


On July 9, 2007 I, Clifford Powers, was chosen as a client representative to observe while Napa State Hospital Staff & Police Officers searched Bartolo Mullen Room and Bed area. Upon my observation one of the male staff members sat down in a chair and began accessing information on Bartolo Mullen computer. I then said " you cant access nothing on his computer because there is personal information and legal stuff on there" this staff in turn said "Keep your nose out of the business and go stand over by the door." I then told him to shut down Mr. Mullen computer. This staff then shut Mr. Mullen computer down. I asked this staff member for his name and he refuse to give it to me.

I personally know Bartolo Mullen and he does legal work for himself as well as many of our peers throughout the hospital. This is very well known by staff and my peers.

I DECLARE UNDER PENALTY OF PERJURY THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

Date: August 3, 2007.

Clifford Powers

  
SIGNATURE

## AFFIDAVIT

On 9-11-07 I, Jess W. Massey, was escorted by Officer Gallegos to the Program 3 hallway conference room. When I arrived there were two men in black suits who introduced themselves as secret service agents and another hospital police officer. I was asked to sit down and the secret service agents began questioning me about some counterfeit money. Afterward Officer Gallegos asked the secret service agents to leave the room. Once they were out of the room Officer Gallegos and the other hospital officer were still present. Officer Gallegos looked at me in a mean way and stated " If you dont keep going along and tell the story I'll kick your ass" at this time I began crying and became scared and upset. I told Officer Gallegos that I want an attorney. The other hospital police officer told Gallegos "that's enough" I was then escorted by the other officer back to my unit. I took a PRN and told my staff what happened. As a result of my being upset and scared I was put on constant watch by staff and talked to the doctor of the day. I fear Officer Gallegos because he on another occassion had me escorted to the visiting room by another officer who told me I had an attorney visit. When I arrived Officer Gallegos was present and he had the other officer handcuff me and I was pushed down in a chair. Officer Gallegos then began to ask me many questions about other clients and what was going on in the facility. I basically told Officer Gallegos what I thought he wanted to hear out of fear. Officer Gallegos then told me he would get me some burgerking food. He never Baught this food. I SWEAR UNDER THE PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND UNDERSTANDING.

DATE: 9-16-07

  
JESS W. MASSEY

12/21/2007

09:09

7072535411

NSH ED

NAPA STATE HOSPITAL  
COST OF CARE PER FISCAL YEAR FOR EACH INDIVIDUAL

Fiscal Year	Allocation Amount	Population	Cost per Individual
2006/07	\$211,810,383	1, 175	\$180,264.00
2005/06	\$191,399,492	1, 157	\$165,427.00
2004/05	\$176,684,826	1, 157	\$152,709.00
2003/04	\$162,793,625	1, 044	\$155,933.00
2002/03	\$150,817,564	1, 064	\$141,746.00
2001/02	\$151,126,365	1, 092	\$138,394.00

Cost Per Meal

Food cost FY 06/07	\$2,298,544.02
Food cost per day	\$6,297.38
Food cost per patient per day	\$5.24
Food cost per meal per patient per day	\$1.74

**Public Information**



July 28, 2008  
Danny Atterbury  
2100 Napa Vallejo Hwy.  
Napa, CA 94558

United States District Court  
Northern District of California  
450 Golden Gate Ave.  
San Francisco, California, 94102

TO THE COURT:

Please find enclosed a completed (filled out) seven (7) page standard habeas corpus writ petition form "HC-6-02.wpd (Rev. 6/02)," including a seven (7) page attachment with nine (9) pages of attached exhibits, to use to file a habeas corpus writ petition in the United States District Court for the Northern District of California under 28 U.S.C. §§ 2254.

Please file the enclosed papers as soon as possible and I have arranged to have a \$5.00 check mailed to the Court to pay the filing fee as soon as we get a case number assigned.

As the Court will read in the attachment to the writ petition, I am 60 years old and I suffer constant severe to excruciating pain from a disabling spinal injury caused by a .38 caliber gunshot wound to my spine years ago and aggravated by a fall at NSH in 2001, and I am therefore unable to work at any of the institution jobs and I cannot currently mail copies of the enclosed documents to the Court.

Sincerely,



Danny Atterbury

Enclosures: (1) Copy of May 13, 2008, and June 11, 2008, orders issued by the First District Court of Appeal.

(2) California Supreme Court denial order stamped "GEORGE, Chief Justice.")

(3) Copy of 2-page search warrant and 3 affidavits.)

(4) Copy of Chart showing cost of care for each individual confined at NSH in 2007 alone.



NSH Mailroom, please stamp legal  
mail to Federal Court for \$12.50 Client.

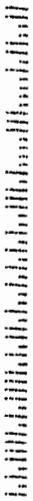
Danny Atterbury  
2100 Napa Vallejo Hwy.  
Napa, CA 94558

MAILED JUL 28 2008

Office of the Clerk  
United States District Court  
Northern District of California  
450 Golden Gate Ave.  
San Francisco, California, 94102

*[Handwritten signature]*

**Legal Mail**  
Mailed 28-Jul-08



If it aint yers,  
Keep yer paws  
Off!!

*aro*

If it aint yers,  
Keep yer paws  
Off!!

*aro*

*aro*

If it aint yers,  
Keep yer paws  
Off!!

*aro*